

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

GARRY L. TOLER,

Plaintiff,

v.

CIVIL ACTION NO. 5:17-cv-02382

UNITED STATES OF AMERICA, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

On April 18, 2017, the Plaintiff, proceeding *pro se*, filed his *Claim for Damage, Injury or Death* (Document 1) which has been construed by this Court as a Complaint seeking relief pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 *et seq.* By *Standing Order* (Document 2) entered that same date, this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On August 4, 2017, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 12) wherein it is recommended that this Court dismiss the Plaintiff's Complaint as to United States Probation Officer Brett Taylor and as to the United States Probation Office for the Southern District of West Virginia, and that the Court refer the matter back to the Magistrate Judge for further proceedings on the Plaintiff's FTCA claim.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by August 21, 2017, and none were timely filed by either party. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Plaintiff's Complaint (Document 1) is **DISMISSED** as to United States Probation Officer Brett Taylor and as to the United States Probation Office for the Southern District of West Virginia. The Court further **ORDERS** that this matter is **REFERRED** back to Magistrate Judge Aboulhosn, pursuant to 28 U.S.C. § 636, for further proceedings on the Plaintiff's FTCA claim against the remaining Defendant, the United States of America.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: August 29, 2017


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA